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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,001	02/20/2004	Guy Mitchell	014208.1646 (70-03-016)	4380
35005	7590	09/22/2008		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE, 6TH FLOOR DALLAS, TX 75201-2980			EXAMINER VIG, NARESH	
			ART UNIT 3629	PAPER NUMBER
			NOTIFICATION DATE 09/22/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail2@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/784,001	<b>Applicant(s)</b> MITCHELL, GUY	
	<b>Examiner</b> NARESH VIG	<b>Art Unit</b> 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1 – 24** are not patentable because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions, A "process" under § 101 must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.<sup>2</sup> If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter. Moreover, the recitation of "computer implemented" in the preamble with the absence of a computer in the body of the claim or a lack of "another statutory class" in the body of the claim does not make the claim statutory.

As for claims 18 - 24, it is deemed that a user uses a touch sensitive screen like the one available on a PDA (i.e. electronic paper) and using a pencil creates i.e. writes an equation to estimate value of a home.

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)

<sup>2</sup> *The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances.* *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)

**Claims 1 – 24** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. For a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention estimates a value of a property by creating an equation and using the equation to estimate the value of a property, and uses a builder identification code and rating to estimate the value. Applicant has neither provided any formula(e) nor examples on how one of ordinary skill in the art can use applicant's invention to generate useful and concrete results.

**Claims 1 – 24** are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. Using a Builder or Builder reputation to estimate a value is subjective to how an appraiser views the builder, and therefore will used subjective rating for the builder which can result in different estimation for the same property when two appraisers use the claimed invention to estimate the value of a property.

Claims 1 – 24 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 - 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specification originally filed 20 February 2004 2008 does not enable how the one of the ordinary skill in the art can use Multiple Linear Regression and Builder Rating to estimate the value of a property.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 24 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As currently claimed, it is not clear whether a user creates an equation every time user uses the invention, or, claimed invention is programmed with a Multiple Linear Regression equation, provides user with

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an interface to enter values and claimed invention estimates a value, or, claimed invention is an application generator which generates an application with a new equation every time a user wants to use the invention.

Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 103***

Claims 1 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheetham et al. US Patent 6,178,406 in view of RealStat – Econometric Solutions for Real Estate Appraisal hereinafter known as RealStat and Bradley et al. US Patent 7,289,965.

Regarding claims 1, 10 and 18, Cheetham teaches teaches system and method for estimating a particular home's value. Cheetham teaches concept for:

using the equation to estimate the particular home's value using plurality of homes.

Cheetham does not explicitly recite creating an equation using multiple linear regression techniques to calculate a plurality of coefficients. However, RealStat teaches concept of wherein an appraiser can apply Multiple Linear Regression analysis to estimate value of a particular home. **It is old an known to one of ordinary skill in the art the appraisers consider the builder reputation when conducting an appraisal of a property.**

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify Cheetham by adopting teachings of RealStat to approximate the current value of a property using historic values for a Local Area Market.

Cheetham in view of RealStat teaches concept for:

a computer readable storage medium (**Cheetham in view of RealStat uses computer system for estimating value of a property**);

computer software stored on the storage medium and operable to (**Cheetham in view of RealStat uses computer system for estimating value of a property**):

Cheetham in view of RealStat does not explicitly teach computer software with capability for creating an equation. However, Bradley teaches a computer system used during the appraisal process of a real estate. Bradley teaches concept for generating a model for providing one or more results.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify Cheetham in view of RealStat by adopting teachings of Bradley to create an equation using the data available and thereby increasing the reliability of data.

Cheetham in view of RealStat and Bradley teaches capability for:

Creating an equation using multiple linear regression techniques to calculate a plurality of coefficients each associated with one of a plurality of data types that is correlated with actual market prices of a plurality of homes, wherein the plurality of homes comprises a statistically significant number of homes;

using the equation to estimate the particular home's value.

Regarding claims 2, 11 and 19, Cheetham in view of RealStat and Bradley teaches capability wherein creating an equation further involves iteratively performing linear regression wherein outliers are eliminated from use in creating the equation after at least one iteration, and wherein outliers comprise homes whose actual selling price or appraised value varies by more than a threshold multiple of standard deviations from the home's estimated value as determined by the most recent iteration of the regression **(It is old an know to one of ordinary skill in the art that Multiple Linear Regression attempts to model the relationship plurality of variables by fitting linear equation to observed data);**

Regarding claims 3 and 20, Cheetham in view of RealStat and Bradley teaches does not explicitly teach to use data identifying a builder. However, **it is old an known to one of ordinary skill in the art the appraisers consider the builder reputation when conducting an appraisal of a property.**

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify Cheetham in view of RealStat and consider the builder to avoid conducting an appraisal by physically visiting the property.

Regarding claims 4, 12 and 21, as responded to earlier, Cheetham in view of RealStat and Bradley teaches capability wherein the plurality of data type can include a builder rating.



Regarding claims 5, 13 and 22, Cheetham in view of RealStat and Bradley teaches capability wherein the plurality of data type can include a distance from the particular home.

Regarding claims 6, 14 and 23, Cheetham in view of RealStat and Bradley teaches capability wherein the plurality of data types can include a statistical rating of a geographic area in which a home in the plurality of homes is located.

Regarding claims 7-8, 15-16 and 24, Cheetham in view of RealStat and Bradley teaches capability wherein the plurality of data types can include an identification of at least one type of home upgrade.

Regarding claim 9 and 17, Cheetham in view of RealStat and Bradley teaches capability wherein each of the plurality of homes can comprise a dwelling type selected from the group comprising single-family house, townhouse, apartment, duplex, houseboat, and condominium.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

1. Frazier et al. US Publication 2004/0098279 which teaches that an appraiser considers Builder Reputation during appraisal process
2. Sklarz et al. US Publication 2002/0087389 which teaches tool which can value a users home
3. Moore et al. US Patent 7,373,303
4. Hough US Patent 5,414,621
5. Hans Isakson, Using Multiple Regression Analysis in Real Estate Appraisal
6. Will G Hopkins article A New View of Statistics
7. Arlene E Goscinski, Automated Valuation Models which teaches AVMs software packages which user Multiple Regression Analysis

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 14, 2008

/Naresh Vig/  
Primary Examiner, Art Unit 3629